

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

David A. Joseph, Sr.,	:	
Plaintiff	:	Case No. 2:12-cv-00803
v.	:	Judge Graham
Licking County, <i>et al.</i> ,	:	Magistrate Judge Abel
Defendants	:	

ORDER

This matter is before the Magistrate Judge on plaintiff David A. Joseph, Sr.'s June 10, 2013 motion to substitute party pursuant to Rule 25 of the Federal Rules of Civil Procedure (doc. 22).

Plaintiff seeks to substitute Marian Skeen, the former director of the Licking-Muskingum Community Correction Center("LMCCC"), for the LMCCC. Rule 25 (d) of the Federal Rules of Civil Procedure states:

An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

Fed. R. Civ. P. 25(d). Here, the entity itself has ceased to exist. There has not been a change in the person holding office and Skeen was not named as a defendant in the

original complaint. If plaintiff intends to pursue a claim against Ms. Skeen rather than the LMCCC, he must file a motion to amend his complaint naming her as a defendant. Rule 25(d) is not the proper procedural mechanism for the amendment plaintiff seeks.

Plaintiff David A. Joseph, Sr.'s June 10, 2013 motion to substitute party pursuant to Rule 25 of the Federal Rules of Civil Procedure (doc. 22) is DENIED.

Under the provisions of 28 U.S.C. §636(b)(1)(A), Rule 72(a), Fed. R. Civ. P., and Eastern Division Order No. 91-3, pt. F, 5, either party may, within fourteen (14) days after this Order is filed, file and serve on the opposing party a motion for reconsideration by the District Judge. The motion must specifically designate the Order, or part thereof, in question and the basis for any objection thereto. The District Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law.

s/Mark R. Abel
United States Magistrate Judge